REMARKS

Favorable reconsideration of this application is respectfully requested in view of the following remarks.

Claims 1, 3, 9 and 20-22 are amended, Claims 2 and 11-19 are canceled and new Claims 24 and 25 are added. Accordingly, Claims 1, 3-10 and 20-25 are pending for consideration.

There is an objection to Claims 1 and 3 because of various informalities. Claims 1 and 3 have been amended to address these informalities. Withdrawal of the objections to Claims 1 and 3 is earnestly solicited.

Claim 9 stands rejected under 35 U.S.C. § 112, second paragraph. At paragraph 5, the Official Action indicates that Claim 9 was rejected because it is an omnibus-type claim. Applicant is unsure of how Claim 9 can be regarded as an omnibus claim. An omnibus claim is typically one which recites "a device substantially as shown and described." That is not what Claim 9 recites. Indeed, Claim 9 further defines that the previously recited sensor is a sensor that senses blood. Thus, the claim further defines the invention in a clear and definite manner, thus complying with the relevant section of the statute. It is thus believed that the rejection of Claim 9 as an omnibus claim is not appropriate and should be withdrawn. In the event the undersigned has not fully appreciated the Examiner's concern, the Examiner is kindly asked to contact the undersigned so that such matter can be discussed.

With respect to the wording in Claim 3, it is believed that the original wording is acceptable. It is true that Claim 3 refers to a plurality of nerve stimulation parameters. However, that the claim refers to plural nerve stimulation parameters

does not mean that those nerve stimulation parameters must comprise stored values with respect to more than one of the characteristics recited in Claim 3. It is thus respectfully submitted that the wording in Claim 3 is not objectionable. Once again, if the undersigned has misunderstood the Examiner's point, the Examiner is kindly asked to contact the undersigned.

Claims 1, 3, 7-11, 14 and 20-23 stand rejected under 35 U.S.C. § 102(b) as anticipated by Kieval.

Claim 1 is directed to a heart treatment equipment comprising a combination of features, including a sensor for sensing an intensity of physical exercise or mental stress of a patient, and a controller that controls a nerve stimulator in response to an output of the sensor such that when the intensity of the physical exercise or the mental stress is relatively high, a relatively strong nerve stimulation is performed and when the intensity of the physical exercise or the mental stress is relatively low, a relatively weak nerve stimulation is performed or no nerve stimulation is performed.

Claim 20 is directed to a heart treating method that involves the step of stimulating a vagus nerve in accordance with a variable parameter such that when the intensity of the physical exercise or the mental stress is relatively high, a relatively strong nerve stimulation is performed and when the intensity of the physical exercise or the mental stress is relatively low, a relatively weak nerve stimulation is performed or no nerve stimulation is performed.

Kieval discloses an implantable system that stimulates the patient's nervous system, activating the baroreflex which in turn decreases sympathetic and increases parasympathetic activity. Col. 3, lines 37-40. This system may include an activity sensor that would allow Carotoid Sinus Nerve Stimulation (CSNS) to be decreased

during periods of activity when an increased heart rate and blood pressure are needed. See col. 3, lines 66-67 through col. 4, lines 1. According to Kieval, the system can incorporate a feedback mechanism into an Implanted Pulse Generating Device (IPG) so as to prevent over-stimulation during periods of exercise when an increase in blood pressure is physiologically necessary. Col. 7, lines 21-35. Kieval also states that nerve simulation should be lowered when activity sensing shows the need for greater cardiac output, such as during indicated strenuous activity of the body. Col. 9, lines 62-65.

Claim 1 recites that the controller controls the nerve stimulator in response to output of the sensor so that when the intensity of the physical exercise or the mental stress is relatively high, a relatively strong nerve stimulation is performed and when the intensity of the physical exercise or the mental stress is relatively low, a relatively weak nerve stimulation is performed or no nerve stimulation is performed. The method recited in Claim 20 involves stimulating a nerve in accordance with a variable parameter such that when the intensity of the physical exercise or the mental stress is relatively high, a relatively strong nerve stimulation is performed and when the intensity of the physical exercise or the mental stress is relatively low, a relatively weak nerve stimulation is performed or no nerve stimulation is performed. Accordingly, Kieval cannot anticipate Claim 1 or Claim 20 because Kieval discloses just the opposite of what is recited in apparatus Claim 1 and method Claim 20. For at least this reason, Applicant requests that the rejections of Claims 1 and 20 be withdrawn and these claims allowed.

Claims 3-10 and 21-25 depend from allowable Claims 1 and 20, respectively, and recite additional features of the invention that further distinguish over the art of

record. Withdrawal of the rejections of Claims 3-10 and 21-23 and allowance of Claims 3-10 and 21-25 are earnestly solicited.

Should any questions arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application the undersigned respectfully requests that he be contacted at the number indicated below.

Respectfully submitted,

BUCHANAN INGERSOLL PC

Date: May 15, 2006

By: _____
Matthew L. Schneider
Registration No. 32,814

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620